

LFC Requester:**Connor Jorgensen****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*Original ☐ Amendment ☐
Correction ☒ Substitute ☐**Date** February 3, 2016**Bill No:** HJR 5**Sponsor:** Rep. Jim Dines**Agency Code:** 305**Short** Independent Ethics**Person Writing** AAG Caroline Manierre**Title:** Commission, CA**Phone:** 505-827-6079 **Email** cmanierre@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

HB 80

SB 124

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

House Joint Resolution 5 proposes to amend the New Mexico constitution by creating a new state ethics commission. The commission would be made up of nine commissioners, appointed by the governor, specific members of the legislature, and the chief justice of the supreme court. HJR5 contains specific qualifications for commissioners, lists commission terms and vacancies, powers and duties of the commission, and establishes that action can only be taken by the state ethics commission if at least six members concur. The bill also requires that any complaint filed with the commission "be signed and not anonymous."

FISCAL IMPLICATIONS**SIGNIFICANT ISSUES:**

1. 42 other States reportedly have Ethics Commissions. This bill presents NM with the opportunity to create one too, and to engraft it into the State Constitution. Threshold significant issues are thus whether to create such a commission, and if so, whether to do so first with a constitutional amendment or directly by enactment of a new statute with necessary appropriations.
2. A key issue will be whether a new Ethics Commission will have sufficient funding to operate effectively. If the Constitutional Amendment is adopted by the voters, the implementing legislation and funding will need to be provided by law to be enacted later. It should be critical to ensure the new Commission is funded adequately.
3. The powers for the new Ethics Commission as outlined in HJR 5 appear to be appropriate to allow it to address important ethics issues. This includes in particular the power to issue subpoenas to conduct investigations and gather necessary information to rule on ethics complaints. If that power is not retained for the Commission, its ability to function could be seriously impaired.
4. Other Ethics Commission bills have proposed transferring certain ethics and campaign finance related statutory duties from the Sec. of State's Office to the new Commission. HJR 5 does not do so, and that will likely enable the Commission to focus appropriately on important ethics issues rather than being burdened with other administrative responsibilities that would not seem to be central to its core mission.
5. An expected controversial issue in HJR 5 is likely to concern confidential information. The proposed amendment provides that the Commission shall treat an ethics complaint as

confidential only until such time as a response is filed or due. Prior bills to create an Ethics Commission have kept an investigation confidential until after a hearing and a finding by the Commission that an ethics violation occurred.

There are likely to be arguments pro and con raised as to when to make ethics complaints and investigations confidential or public. Some will likely argue that there is a strong public interest in disclosing complaints, similar to the public pronouncements of indictments in criminal proceedings before a finding of guilt. Others will likely argue that disclosure of ethics complaints can do considerable harm and damage to a person's reputation and that no information should be disclosed publicly unless and until the Commission finds that an ethics violation has been committed.

PERFORMANCE IMPLICATIONS: N/A

ADMINISTRATIVE IMPLICATIONS: N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

- House Bill 80 and Senate Bill 124 both create a state ethics commission. Both of these bills differ in language from House Joint Resolution 5, and were either of the bills as well as the constitutional amendment to be adopted, there would be conflict between the language and requirements regarding the state ethics commission.

TECHNICAL ISSUES

- HJR5 states that the commissioners will "draw lots" to determine the length of initial terms, but does not indicate how this would be handled practically or what "drawing lots" consists of.
- HJR5 proposes that the executive director "shall be a licensed attorney in the state." However, it does not clarify whether the attorney must have a New Mexico license, or whether that attorney must be in good standing as an attorney in New Mexico.
- Subsection I lists what types of violations constitute complaints and refers in multiple places to "standards of conduct" but it is unclear whether these would be officially adopted standards of conduct or a subjective/objective, general standard of conduct for each subset of respondents.

OTHER SUBSTANTIVE ISSUES: None

ALTERNATIVES:

1. Create the Ethics Commission by statute rather than Constitutional Amendment. See HB 80 and SB 134.
2. As an alternative to a nine-member Commission, alternatives could be larger (e.g., 11 members, as in HB 80 and SB 124) or smaller (seven, five or three-member Commissions).
3. Given that the proposed Ethics Commission would have jurisdiction over both Executive and Legislative Branch public officials and employees, one alternative is to avoid the potential conflict of interest or "bias perception" problem of having Commissioners appointed by the Governor and Legislative leaders and instead have the Commissioners appointed by a member of the Judicial Branch, e.g., the Chief Justice.
4. Specifically, to address Points 2 and 3 above, one alternative to HJR 5 would be to create a three-member Commission appointed by the Chief Justice. To address geographic diversity concerns, the three Commissioners could be required to be appointed from each of NM's three congressional districts.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL: Status Quo

AMENDMENTS: None